IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 196 OF 2006

Shri Vijaykumar Ghale,
of major age, presently
lodged in Judicial Lock-up,
Panaji-Goa. ... Applicant

versus

The State
Through P.I.,
Anti Narcotic Cell,
Panaji-Goa. ... Respondent

Mr. S. M. Volvoikar with Mr. R. Castro, Advocates for the Applicant.

Ms. W. Coutinho, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 15TH JUNE, 2006.

O R D E R

Pursuant to the Order of this Court dated 5-5-2006, Ms. W. Coutinho, the learned Public Prosecutor, upon instructions from the Analyst/Senior Scientific Officer(Drugs), whose report was referred to in para 5 of the said Order, has

stated that quantitative analysis of charas has never been done in the past, that the same also cannot be done and it is also not required to be done. The learned Public Prosecutor has also referred to the definition of "Cannabis(hemp)" in Section 2(iii) of the Act and has also placed reliance on a Division Bench Judgment of this Court in the case of **Ketil Mardal** v. **State of Goa**(1997 Cri.L.J.3581) and the case of **Joseph Fernandez** v. **State of Goa**(2002 Drugs Cases 22).

2. Charas or Hashish is the other non proprietary name of Cannabis and Cannabis Resin which is the name of the drug (international non proprietary name). Charas which is commonly known as Hashish is a resin exuded from the leaves and stems of a plant known as Cannabis Sativa or Cannabis Indica or Indian hemp. Charas are smoked with tobacco in a cigarette or a pipe or a hukka and is said to be most powerful of Cannabis preparations. The principle constituent of the resin is Cannabinol which on exposure to heat is partly converted to the very active isomeric Tetrahydrocannabinols(THC) and the active principle concentration in Charas varies between 25% to 40%(See page 500 of Dr. K. S. Narayan Reddy's Essentials of Forensic Medicine

and Toxicology and page 911 of Parikh's Text Book of Medical Jurisprudence and Toxicology.

3. Section 2(iii) defines Cannabis(hemp) to mean:-

(a) Charas, that is, the separated resin, in whatever form, whether crude or purified obtained from the Cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish.

(b) Ganja, that is the flowering or fruiting tops of the Cannabis plant(excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of Cannabis or any drink prepared therefrom.

4. The Apex Court in the case of **Joseph Fernandez** v. **State of Goa**(supra) observed that the Analyst who had tested the contraband in the laboratory, to a question in cross-examination had said that he could not answer whether the contraband contained cowdung also but in the certificate as well

as in the examination-in-chief, he had stated that the contraband was charas and, therefore, the aforesaid isolated answer was hardly sufficient to destroy the probative value of the evidence of that witness. This decision might not throw much light in the controversy sought to be raised. In the case of **Ketil Mardal** v. **State of Goa**(supra) it was contended that determination of percentage of charas was necessary and percentage of charas was not determined in that case and, therefore, the sample had to be treated as less than 5 gms. and, therefore, meant for personal consumption. In that context, the Division Bench of this Court observed that the identification test for charas was positive. The definition of charas as contained in Section 2(iii)(a) states that charas, is the separated resin, in whatever form, whether crude or purified, obtained from the Cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish. The substance qualifying as charas, the charas can be crude or purified. In crude form there would certainly be impurities besides charas and if it is so, the analysis of the substance would always show that it contains charas since charas may itself contain impurities being in crude form. This decision does throw some light on the controversy.

4. Firstly, the statement made by the learned Public Prosecutor has got to be accepted at this stage and it would be open to the accused during the course of the trial to demonstrate either through the cross-examination of the Analyst or by reference to some other expert evidence that the opinion of the Analyst is incorrect. When the Analyst has opined that the substance analysed by him contained charas we are bound to presume at this stage that the substance contained the active principle(THC) in the required concentration varying from 25%-40%. That apart, prima facie, in my view, the view expressed in para 7 of the Order dated 5-5-2006 would be inapplicable in the case of Cannabis, for possession of which the accused is being prosecuted under Section 20(b)(ii)(C) of the Act in the light of the definition of Cannabis given in Section 2(iii) of the Act. Since charas is a derivative resin of the Canabis plant which is otherwise known as Cannabis Sativa or Indian hemp it could be crude or purified or concentrated and it could also be with or without mixture of any neutral substance. Therefore it is not necessary to carry out any quantitative analysis to find out the actual contents of charas alone. In this view of the matter, the accused allegedly having been found with 1.354 kgs. of charas,

the case of the accused would be governed by Section 37 of the Act and is bound to be looked at negatively. In my view, considering that the accused is alleged to have been found with commercial quantity of charas, the accused would not be entitled to bail. The application for bail filed by the accused is, therefore, hereby dismissed.

N. A. BRITTO, J.

RD